

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayner
Marshall Johnson
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Thomas Pugh
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Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Application of Minnesota
Pipe Line Company for a Certificate of Need
for a Crude Oil Pipeline

ISSUE DATE: February 16, 2006

DOCKET NO. PL-5/CN-06-02

ORDER GRANTING VARIANCE AND
ACCEPTING APPLICATION AS
SUBSTANTIALLY COMPLETE

PROCEDURAL HISTORY

On January 3, 2006, Minnesota Pipe Line Company (MPLC or the Company) submitted its Certificate of Need Application. The proposed facility, the MinnCan Pipeline, is a crude oil pipeline from Clearbrook, Minnesota to the Twin Cities area refineries.¹

On January 4, 2006, the Commission issued a notice requesting comments on the substantial completeness of the Company's application: initial comments by January 18, 2006 and reply comments by January 27, 2006.

On January 18, 2006, MPLC filed supplemental information and the Minnesota Department of Commerce (the Department) submitted comments on the completeness of the application.

On January 24, 2006, the Commission issued its ORDER EXTENDING COMPLETENESS REVIEW PERIOD. In that Order, the Commission indicated that it would consider the substantial completeness of the application "as soon as practicable."

Also on January 24, 2006, Laura and John Reinhardt filed comments on the issue of landowner notification.

¹ Two days later, on January 5, 2006, MPLC filed an Application for a Routing Permit for this project. The Routing Permit Application has been assigned to Docket No. PL-5/PPL-05-2003 and, to the extent feasible, will be processed in tandem with the Company's Certificate of Need Application.

The Commission met on February 2, 2006 to consider this matter.

FINDINGS AND CONCLUSIONS

I. Legal Context

The proposed facility is a crude oil pipeline from Clearbrook, Minnesota to the Twin Cities area refineries. The proposed project falls under the definition of "large energy facility" in Minn. Stat. § 216B.2421, subd. 2 (4). Therefore, in accordance with Minn. Stat. § 216B.243, subd. 2, the facility cannot be sited or constructed in Minnesota unless the Commission issues a certificate of need to the Applicant.

The certificate of need rules pertinent to this filing are Minn. Rules, Parts 7853.0010 to 7853.0800. More specifically, the application requirements for petroleum pipeline facilities are given by Parts 7853.0230 to 7853.0270 and 7853.0500 to 7853.0640.

The primary issue for the Commission at this stage is whether to accept the Company's application as substantially complete and, if so, whether to refer the matter to the Office of Administrative Hearings for a contested case proceeding.

II. Filings Received Following Commission's January 4, 2006 Request for Comments

A. MPLC

In response to a Department request for additional information, MPLC provided supplemental information to the Department and filed it with the Commission.

B. The Department

The Department concluded that the application, together with the supplemental information filed with the Commission on January 18, 2006, can be considered complete with one exception. The Department noted that Minn. Rules, Part 7853.0230 requires an Applicant to specify the size of the pipeline in Mbpd-miles.² Instead, the Company calculated the size of the pipeline (its

² Mbpd-miles is defined in Minn. Rules 7853.0010, Subp. 16 as follows:

"Mbpd-mile" means a descriptive unit used as a measure of the size of a pipeline, the quantity of which is determined by multiplying:

A. either the length in miles of the new (section of) pipeline in Minnesota, or 50 if the capacity expansion is achieved by adding power, and

B. the new or additional design capacity in thousand barrels per day (Mbpd), at a viscosity of 100 SSU/60 degrees Fahrenheit and a specific gravity of .88/60 degrees Fahrenheit.

throughput capacity) using Enbridge Pipeline specifications for the crude oil expected to be flowed through the MinnCan Pipeline: a winter viscosity of 900 SSU/60 degrees Fahrenheit, a summer viscosity of 2000 SSU/60 degrees Fahrenheit, and a specific gravity of .94/60 degrees Fahrenheit.

The Department argued that the three criteria for granting a variance to the Mbpd-miles formula were met because requiring MPLC to calculate the size of the proposed pipeline using the definition of Mbpd-mile found in the rule would impose an excessive burden and would adversely affect the public interest since the calculation required by the rules does not accurately reflect the characteristics of the product that is expected to be delivered through the proposed pipeline. The Department also stated that a variance would not conflict with standards imposed by law.

Accordingly, the Department recommended that the Commission should grant a variance to Minn. Rules, Part 7853.0010 and declare the application complete as supplemented by the information filed by the Company on January 18, 2006.

C. Laura and John Reinhardt

The Reinhardts recommended that the Commission find the MPLC's application incomplete until the Company has undertaken landowner notification in conformance with the Commission's and the Environmental Quality Board's (EQB's) rules governing applications for high voltage transmission lines (HVTL).

The Reinhardts specified the manner of notice they recommended, requesting that the Commission direct MPLC to provide landowner notice in a manner similar to that outlined in Minn. Rules, Part 7829.2550, Minn. Stat. § 116C.57, subd. 2, and Minn. Rules, Part 4400.1350.

In addition, the Reinhardts asked that the Commission direct its staff to initiate formal rulemaking proceedings to conform landowner notice requirements for all proposed large energy facilities where an applicant may exercise the power of eminent domain to acquire lands necessary for construction to the notice requirements applicable to HVTLS.

III. Commission Analysis and Action

A. Substantial Completeness

Application requirements are specified by Parts 7853.0230 to 7853.0270 and 7853.0500 to 7853.0640. The Commission has reviewed MPLC's application in light of these requirements and finds that the Company's January 3, 2006 application provides all the information called for in the rules with the exception of the Mbpd-mile issue, which the Commission will address below.

The objection raised by the Reinhardts regarding notice to landowners is not, in fact, a completeness issue. As the Reinhardts have noted, the current rules applicable to pipeline filings do not require the kind of notice to landowners that the Reinhardts believe is appropriate and for that reason it would be inappropriate to fault the Company's application on completeness grounds due to the Reinhardts' allegations.

The only impediment to completeness, therefore, is the fact that MPLC's application describes the size of the pipeline using viscosity and specific gravity figures different from what Minn. Rules, Part 7853.0010, subp. 16 prescribes. Having considered this matter, however, the Commission is convinced that the viscosity and specific gravity figures used by the Company to calculate the size of the pipeline more accurately apply to the crude oil that will be flowing through the pipeline than the rule's figures and therefore help report more realistically the capacity (projected flow-through amount) of the proposed pipeline.

Based on this finding, the Commission finds that the three requirements established in Minn. Rules, Part 7829.3200 for granting a variance to the rule on this point are met. Requiring the Company to use viscosity and specific gravity figures that would result in an over-estimation of pipeline size (capacity) would unreasonably burden everyone involved with this proceeding by misstating the size of the pipeline. Using more realistic viscosity and specific gravity figures as the Company has done in this case would advance rather than be contrary to the public interest since it would provide a more accurate record. Finally, granting a variance on this point would not conflict with standards imposed by law.

Accordingly, the Commission will grant the Company a variance from the requirement to use the viscosity and specific gravity set forth in the rule and allow it to use the Enbridge Pipeline specifications in its application.

Having thus eliminated the only non-conforming aspect of the Company's filing, the Commission will accept it as being substantially complete, as of the date it was filed, January 3, 2006.

B. Notification to Landowners

The Commission is sensitive to the issue of landowner notice and will direct the Company to work with Department and Commission staff to develop a landowner notification letter, including the date, time, and place of the prehearing conference, if that information is known at the time the letter is issued.

To address the issue on a broader basis, the Commission will issue a notice soliciting comments on why the notice requirements applying to high voltage transmission lines (HVTL) should not be incorporated into the rules regarding pipeline facilities.

ORDER

1. The Commission hereby grants the Company a variance from the viscosity and specific gravity figures prescribed in Minn. Rules, Part 7853.0010 in calculating the size of its proposed pipeline, thereby allowing it to use the Enbridge Pipeline specifications for viscosity and specific gravity in its application: a winter viscosity of 900 SSU/60 degrees Fahrenheit, a summer viscosity of 2000 SSU/60 degrees Fahrenheit, and a specific gravity of .94/60 degrees Fahrenheit.

2. Having cured the only non-conforming aspect of the Company's filing in Order Paragraph 1, the Commission accepts the Company's application for a certificate of need as being substantially complete as of the date it was filed, January 3, 2006.
3. MPLC shall work with Department and Commission staff to develop a landowner notification letter. The letter shall including the date, time, and place of the prehearing conference if this information is known at the time the letter is issued.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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